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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH**

10 **JAMES CORBELL**, an individual, **DYLANA
LEWIS**, an individual, **JAMES GRINER**, an
11 individual, **JOHN GRIMSBO**, an individual,
KEVIN THOMPSON, an individual,

Plaintiffs,

13
v.

14 **CITY OF PORTLAND**, an Oregon
15 municipality, **TY KOVATCH**, an individual,
RON DRATH, an individual,

Defendants.

Case No.

COMPLAINT

1. Retaliation Under ORS 659A.199 and ORS 659A.203 [Reporting Unlawful or Wasteful Practices]
 2. Retaliation Under ORS 659A.183 [Use of Family Medical Leave]
 3. Discrimination Under ORS 659A.030 [Sexual Harassment/Sex]
 4. Discrimination]Discrimination Under ORS 659A.112 [Disability/Failure to Accommodate]
 5. Discrimination/Retaliation Under ORS 659A.040 [Workers' Compensation Discrimination]
 6. Retaliation Under ORS 654.062 [Opposing Unsafe Employment Conditions]

**NOT SUBJECT TO MANDATORY
ARBITRATION**

Prayer Amount: \$998,500

Filing Fee Pursuant to
ORS 21.160 (1)(c): \$560

JURY TRIAL DEMANDED

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1 Plaintiffs James Corbell ("Corbell"), Dylana Lewis ("Lewis"), James Griner ("Griner"),
2 John Grimsbo ("Grimsbo"), and Kevin Thompson ("Thompson") (collectively "Plaintiffs")
3 respectfully allege as follows:

4 **I. INTRODUCTION**

5 1.

6 The Portland Water Bureau of the City of Portland – Portland's department in charge of
7 ensuring clean water efficiently runs to city residents and businesses – is systematically
8 retaliating against employees who fail to embrace the politically motivated atmosphere of its
9 bosses. The Portland Water Bureau's management willfully places employees in the way of
10 harm, and when employees are invariably injured, employees are routinely terminated. If
11 employees complain and rock the boat about the bureau's wrongful and wasteful practices, they
12 are victimized through harassment and other retaliation. Each of the plaintiffs are or were
13 employees of the Portland Water Bureau and asserted their legal rights in different – but similar
14 – ways, thereby warranting termination or retaliation in the eyes of an insular and ignorant
15 employer and its management. This lawsuit follows the adverse employment actions inflicted
16 upon Plaintiffs by the defendants.

17 **II. THE PARTIES**

18 2.

19 Corbell was, at all material times, and currently is an individual residing in Clackamas
20 County, Oregon.

22 3.

23 Lewis was, at all material times, and currently is an individual residing in Multnomah
24 County, Oregon.

25

26

4.

Griner was, at all material times, and currently is an individual residing in Clackamas

County, Oregon.

5.

Grimsbo was, at all material times, and currently is an individual residing in Multnomah

County, Oregon.

6.

Thompson was, at all material times, and currently is an individual residing in Clackamas

County, Oregon.

7.

Corbell, Lewis, Griner, Grimsbo, and Thompson are referenced collectively herein as

"Plaintiffs" and "the plaintiffs."

8

Defendant City of Portland, and its Portland Water Bureau (together (the "City" or "PWB"), is a municipal corporation of the State of Oregon. The PWB is responsible for the torts of its officers, employees, and agents acting within the scope of their employment or duties.

9.

Defendant Ty Kovatch ("Kovatch") is an individual residing in, on information and belief, Multnomah County, Oregon. Kovatch, at all material times, acted within the course and scope of his employment and had supervisory authority over Corbell, Griner, Grimsbo, and Thompson.

10.

Defendant Ron Drath ("Drath") is an individual residing in, on information and belief, Multnomah County, Oregon. Kovatch, at all material times, acted within the course and scope of his employment and had supervisory authority over Lewis.

1 11.

2 The PWB, Kovatch, and Drath are referenced collectively herein as "Defendants" and
3 "the defendants."

4 **III. FACTUAL ALLEGATIONS COMMON TO MULTIPLE CLAIMS**

5 **A. The Portland Water Bureau**

6 12.

7 The PWB governs and controls a water system that dates back to the early days of
8 Portland in 1895. It is responsible for maintaining and providing drinking water throughout the
9 City, as well as ensuring its high quality, supply, and efficient management. A critical element
10 of the PWB's operations includes the construction and repair of water lines throughout the area.
11 Not only is it important for the PWB's customers be able to drink and use water for consumer
12 purposes, but the water is also necessary for many utilities and public services, like fire
13 protection. The PWB has a budget of almost \$750 million per year.

14 13.

15 During the times relevant to this lawsuit, the PWB was managed and directed by Michael
16 Stuhr ("Stuhr"), the longtime Chief Engineer for the PWB prior to becoming its director in 2015.
17 Stuhr is and was responsible for supervising all of the operations of the PWB and its employees
18 and directors. These included departments such as Finance and Support Services, Engineering
19 Services, Operations, Customer Services, and Maintenance and Construction.

20 14.

21 The Maintenance and Construction department is responsible for the overall management
22 of PWB's maintenance, construction, and support functions, including repair and maintenance of
23 water distribution, as well as various purchasing, fleet, and apprentice management and
24 programs.

25 3 – THE COMPLAINT

15.

Kovatch joined the PWB in 2012 as its Director of the Maintenance and Construction department. Before joining the PWB, Kovatch had a background in politics, having served as the campaign manager and chief of staff to a prior Portland city commissioner. When that commissioner decided not to run for re-election in 2012, Kovatch leveraged his political connections to obtain his executive role at the PWB, despite having no prior experience working in construction, management, engineering, or water supplies. Kovatch reported directly to Stuhr.

16.

The Customer Services department is directed by Kathryn Koch, who manages customer services for the PWB, including meter reading, meter maintenance and repair, account services, billing and collection, and customer service quality assurance. Koch manages Drath, who in turn is one of the primary supervisors of meter technicians in the Department of Customer Services.

B. PWB's Culture of Corruption and Favoritism

17.

For as long as Kovatch and Koch have worked for the PWB, they have run their departments like their own personal fiefdoms, rewarding those who play the role of sycophant and punishing those who either intentionally or inadvertently cause "trouble" or make them look bad.

18

When an employee witnesses a chemical spill, for example, that employee would be disciplined for pretextual reasons such as having a "bad attitude." When union steward advocate for the rights of bullied workers, invented slights are made part of the employee's permanent record. When a supervisor commits serial sexual harassment against a female employee, the complaints are ignored because the supervisor is a personal friend.

1 19.

2 It was into this environment that Stuhr entered his role as the PBW's boss, and he has
3 apparently done little if anything to change it.

4 **C. PWB Endangers Public and Employee Safety**

5 20.

6 This toxic environment not only makes work unpleasant for PWB employees, it
7 endangers public and employee safety and health. In March 2018, for example, an employee
8 was instructed to drain a large tank of at least 150 gallons – weighing about a ton – of tack coat
9 (a material used to coat a road before paving) into the PWB's facility yard because the material
10 had become sludgy and unusable. The toxic tack spewed into the yard, creating a giant sludgy
11 mess. Trucks and people traveled through the spill and spread it around the facility.
12

13 21.

14 These PWB employees had no training on how to handle the mess. Rather than taking
15 cleanup and containment measures to ensure it did not seep into the groundwater or otherwise
16 endanger the public – which is required by OSHA – the spill was ignored and on-hand staff did
17 not report the incident. Employees on the ground attempted to cover it up, inappropriately
18 attempting to dispose of some of it through a non-toxic disposal facility. It rained on the spill, as
19 well, causing the tack to spread further and, presumably, to flow into the groundwater. Corbell
20 and Griner learned about the spill and reported it to Kovatch. Despite a mandatory safety
21 inspection of what happened, Kovatch ignored the incident and dismissed its importance.
22

23 22.

24 Kovatch also routinely pushes employees to perform dangerous tasks beyond their
25 training, qualifications, and experiences. For example, many were aware that Kovatch pushed
26 brand-new rookie employees with no heavy equipment experience to operate excavators and

1 other large machines. When these employees reported their safety concerns, asked to be
2 relieved, or requested training or help, Kovatch would publicly belittle their concerns, tease them
3 mercilessly, and/or push them forward with the tasks.

23

Kovatch, ever in his own world, has repeatedly boasted how much he is "loved" by all of his PWB subordinates; he even expressed how he could not understand why he was in sensitivity training.

D. Corbell's Termination: PWB Stamps Out Dissent and Retaliates Against Whistleblowers

1. Corbell's Background at the City

24

The City hired Corbell full time as a Utility Worker 2 at the Portland Bureau of Transportation in March 2003. Within a few months he was upgraded to an AEO 1 position and became crew leader. He was again promoted in 2005 and, in 2012, was promoted to CEO. While working with the Portland Water Bureau, Corbell has served as a CDL instructor, a safety committee member, and as a CEO trainer.

2. Corbell Tirelessly Advocates for Employee Rights

25

Corbell was a long-standing shop steward advocating for the rights of his co-workers. In that capacity, he worked with management on behalf of his fellow employees to resolve issues and complaints, working the grievance process if needed, and answering co-worker questions.

26

Corbell had substantial impact advocating for the rights of PWB employees, and Kovatch despised him for it. Corbell diligently worked with employees who were working "out of class"

1 (performing responsibilities outside of the scope of their bargained-for jobs), pointing out to
2 Kovatch that he was misusing, overusing, and abusing employees by working them outside of
3 their comfort zone. He also led moves to change job descriptions, for better pay and working
4 conditions, and generally ensured employee rights were honored. Because Kovatch was the
5 primary wrongdoer and did nothing to correct his behavior, Corbell often bypassed him to
6 complain directly to human resources.

27

In February 2018, for example, Kovatch cruelly mocked one of his subordinates, a
9 manager who was improperly performing other employees' work. A supervisor with a limp was
10 performing heavy equipment work (which he shouldn't have done in the first place); Kovatch
11 publicly ridiculed and humiliated this supervisor. Corbell reported the incident and, along with
12 the chief steward, met with the City's human resources to discuss the incident.
13

28.

15 As another of many examples, Corbell reported the March 2018 chemical spill described
16 above.

3. Corbell Subject to Retaliation, Harassment, and Termination

29.

19 As a result of Corbell's advocacy and reports of unlawful activity, he was subject to
20 repeated instances of pretextual retaliation. For example, Corbell was informed about the tack
21 coat spill described above by one of the employees present. With no one else acting, he reported
22 the incident up his chain of command and brought it to Kovatch's attention. No action was
23 taken; instead, he was immediately thereafter disciplined for his use of sick leave, even though
24 he used it pursuant to an authorized, pending workers' compensation claim.
25

30.

Shortly after this, later in March, management encouraged one of Corbell's co-workers to file a bogus hostile work environment claim against him. At a meeting investigating those false allegations, presided over by Kovatch, Corbell was denied union representation and instructed to cease asking questions and to "be quiet" going forward. Kovatch, of course, preferred to host these types of pseudo-disciplinary meetings without PWB human resource representatives present and without the attendance of union stewards.

31.

Corbell refused to be intimidated and would not submit to Kovatch's demands to abuse his represented employees. As a result, Corbell was subjected to additional false complaints and removed from his normal schedule.

32.

Later in 2018, running up against constant roadblocks to success at the PWB, Corbell went directly to Stuhr to seek help and protection.

33.

Despite his best efforts and solid performance, he was terminated at the end of August 2018. To further harm Corbell, the City terminated Corbell's insurance rather than extend it for the customary 30 days – something that, on information and belief, is both retaliatory and seldom (if ever) done.

E. Lewis Subjected to Harassment and Forced to Work with the Perpetrator

34.

Lewis, a relatively new employee and young mother of two, was hired by the PWB in April 2016 as a meter reader. She excelled from the outset of her employment and was promoted to a meter technician in August 2017.

35.

She has the misfortune, however, of being supervised by Drath. Early on in their supervisory relationship, Drath expressed reluctance to hire or promote women with children because of their perceived lower loyalty to the job. He began calling Lewis "my dirty girl" numerous times which made Lewis feel very uncomfortable and, not surprisingly, dirty. He made crude, sexist jokes about women and seemed to take delight in referring to his female technicians as his "kids" and "problem children."

36.

Lewis was also discouraged from advancing her career. Lewis, for example, applied for the City's cleverly named "SOAKED" program ("Sharing Our Assets and Knowledge for Employee Development"), which helps expand employees' understanding of the PWB's overall operations. She was accepted to the program, but management pressured her to forfeit the opportunity. Lewis asked permission to attend a Women in Trades program; Drath refused to give her time to do so. She asked to attend training through the American Water Works Association; Drath laughed in her face. Lewis has observed that Drath is far more accommodating to male employees who seek to participate in programs like these.

37.

Drath later began to micromanage Lewis' schedule. On June 25, 2018, Lewis had to leave work early to care for her daughter, as many employees do from time to time. When she returned to work the next day, Drath asked personal questions of Lewis, like whether her children's father was "in the picture." He encouraged her to find other sources of care for her children, stating that he needed Lewis to be physically present at work.

38.

On July 3, 2018, Lewis finally took her concerns about Drath to PWB's human resources.

Human resources scheduled an in-person meeting with Lewis, which required her to be physically present at a facility separate from the PWB's primary one. Drath was immediately suspicious of where she was going, quizzing her about why she was going to a different city building. Lewis told him to contact human resources if he wanted answers.

39.

On July 5, 2018, Drath physically followed her to a work site to watch her physically repair a broken line. Lewis and a co-worker were disturbed by how he was hovering, and were suspicious about his motives, since he had never attempted to watch Lewis work before.

40.

Shortly thereafter, Lewis sought a light duty assignment because of an injury that she had been trying to work through. Instead of attempting to provide her with a light duty assignment, Rath told her to "stop looking for light duty," and indicated that he thought she was faking injury.

41

The City further retaliated against Lewis by assigning her to work in the PWB's downtown facility performing menial work as a purported accommodation, even though there was far more meaningful work at her own facility, and had to pay a small fortune in fees for parking.

42.

On September 18, 2018, Lewis brought the results of an MRI, which showed that she had not been misrepresenting the extent of her injury. She was then reassigned temporarily to help

1 with PWB's safety fair, where she was temporarily not working under Drath, though he would
2 frequently check in on her.

3 43.

4 Once Lewis was performing her light duty assignment, while performing her assigned
5 responsibilities, she stumbled upon an email from Koch accusing Lewis of mistakes and/or
6 failings in her light duty work. The recipient of the email was warned to "train [Lewis] at your
7 own risk." Lewis followed up with the individual who supposedly complained about Lewis'
8 work; she denied that there was any problem with Lewis' performance in any way.
9

10 44.

11 After all of the stress of these events, Lewis attempted to get help from Stuhr. She was
12 passed off to the deputy director, who met with Lewis and said the meeting was a "safe place"
13 and that the conversation would remain confidential. Lewis informed the deputy director that
14 she did not want to work under Drath any longer. Lewis was informed that the claims against
15 Drath had been substantiated, but that she would have to continue working under his supervision.
16 Lewis reported that she continued to fear retaliation from Drath and Koch.

17 45.

18 During a meeting a week or so later, the deputy director told Lewis that she had disclosed
19 their confidential conversation to Koch.

20 46.

21 Lewis then sought help from the PWB's human resource department, and disclosed she
22 was afraid of continuing her current assignment, particularly with Drath. She was told that the
23 only solution they could offer was to seek *therapy* and a new job. Lewis has applied for many,
24 many positions within the City, including with customer service. For a customer service
25 position, for example, she had three interviews and has not been offered a job, even though she

1 was far more qualified than the white men who received the positions – even though Lewis had
2 even *trained* those men.

3 47.

4 Drath has acted erratically and suspiciously towards Lewis, as well. In November 2018,
5 for example, Drath created a false story for why Lewis needed a new GPS unit in her truck, even
6 though it worked fine. Koch later expressed that Drath wanted to know more about Lewis'
7 whereabouts. Drath and Lewis' lead have been watching Lewis very closely, and making her
8 justify her pre-work stretching, which she does to prevent further injury. Rules were later
9 initiated to reduce Lewis' ability to do this simple act.
10

11 48.

12 Drath has even made light of the City's supposed prohibition sexual harassment and
13 general harassment during an annual PWB meeting while giggling and belittling the exercise.
14 Lewis was ironically forced to sit through Drath explaining policies that he himself did not
15 follow and did not respect.

16 **F. Griner Witnesses Further Impropriety and is Harassed at Work**

17 1. Griner's Success at the PWB and Integral Work in Safety

18 49.

19 Griner has been a loyal employee of the PWB since April 1999. He rose from the ranks
20 from his original position as a Utility Worker II to his current position as a Management Analyst.
21

22 50.

23 Griner has served in a number of roles for the PWB over time, including as a
24 planner/scheduler, Interim safety officer, and through all of the field positions including
25 construction crew leader/WOM. His vast institutional knowledge along with his recognized
26 industry experience make him an indispensable employee for Kovatch when certain types of

1 projects need be completed. Griner's responsibilities as a Management Analyst have always
2 been unclear (he has repeatedly asked for a job description) but, essentially, he serves at the
3 whim of Kovatch to complete various projects in the safety division of the PWB. Griner's role
4 made him privy to many of the PWB's failings under Kovatch's leadership.

5 2. Griner Witnesses and Experiences Repeated Mismanagement

6 51.

7 When Griner worked as a planner and scheduler, for example, he was one of the PWB
8 employees in charge of the Computerized Maintenance Management System (the "CMMS"), a
9 database that tracked, among other things, work assignments and allotments of bureau resources.

10 The database metrics were tightly monitored by Kovatch, and Griner witnessed him
11 manipulating numbers to improve his perceived success. Griner saw Kovatch do these sorts of
12 manipulative processes time and again in this and other areas of his management. Appearance of
13 success was his sole concern. When questioned, Kovatch would dismiss Griner's concerns and
14 blithely command that it be done his way, which was always (at least in his eyes) the "right
15 way," regardless of the deceptive results.

16 52.

17 Griner also witnessed the PWB's complete dereliction of duty when it came to managing
18 and supervising compliance with health and safety regulations, including those mandated by
19 Oregon's Department of Environmental Quality, the U.S. Environmental Protection Agency, and
20 the U.S. Occupational Safety and Health Administration. Kovatch intentionally placed
21 employees into the rule of compliance management and reporting who did not know how to do
22 the job – without someone actually keeping the PWB accountable and in compliance, Kovatch's
23 performance metrics would again be artificially inflated.

53.

Griner himself requested the opportunity to temporarily step in and assume the role of safety officer. This was a vital position responsible for innumerable regulatory, safety, education, environmental, and customer programs; any vacancy in this role would be irresponsible and dangerous for employees, customers, and the environment.

54.

The last full-time employee assigned to the entire environmental, safety, and health program for the PWB (responsible for all 700 employees), Contract Services, and the general public, however they may be involved, had provided notice of her intent to resign after Kovatch removed all of the environmental, safety, and health employees covering those duties. This employee warned Kovatch that his cavalier approach to safety was a mortal danger to PWB employees.

55.

Without an assigned safety officer, all of the responsibilities of the officer would need to be disseminated among numerous management employees. Even without training, the management employees would have unknowingly become responsible for *all* regulatory compliance, education, and experience required in the extremely dangerous industry of underground utility maintenance, repair, and installation. These tasks involve, for example, management of

- lane closures,
 - shoring equipment,
 - traffic planning,
 - bus route detours.

- fulfilling the terms of the Americans with Disabilities Act (and its successor statutes),
and
 - excavation around high pressure gas and extreme high voltage transmission lines,

for example.

56.

The variety of skills necessary for these tasks require much more than entry-level supervisory skills – they are obtained through mainly field experience and training.

57.

After working 60 days fielding the varied real-world issues, tasks, and involvement required as the safety officer, Griner became painfully aware that much more help was desperately needed. Griner informed Kovatch that he (Griner) was not qualified to perform the required duties of the safety officer, as it required a formal education and many years of experience implementing environmental, safety, and health programs for such a large organization. After these first sixty days of feeling like he was doing a disservice to the City and realizing that he could not be part of the false sense of security, Griner voluntarily and in good faith resigned from the position.

3. Griner Experiences Harassment and Retaliation

58.

Wishing a lackey would be in this position (like other positions that would otherwise hold him accountable), Kovatch was very frustrated with Griner's choice.

59

24 Griner further earned Kovatch's ire because of his participation in the March 2018
25 chemical spill. It was Griner who Corbell first contacted about the covered-up spill, and Griner
26 in turn reported the situation to Kovatch. Kovatch already knew about the spill but took no

1 action, instead waiting to see who else would report the situation. Rather than investigate the
2 scope of the incident, Kovatch instructed Griner not to contact any regulatory agencies. Griner
3 had numerous photos of the incident, but Kovatch did not care. During a meeting of the key
4 witnesses to the situation, Kovatch tried to convince them (though not so much Griner) that it
5 was "okay" to have the toxic material, uncontained and exposed to heavy rains, buried as normal
6 and shouldn't have any problem with the spill.

60.

9 Griner's attempt to keep the ship afloat was tireless. In October 2016, for example,
10 Griner learned that a PWB electrical contractor committed a serious lockout error under the
11 supervision of a PWB inspector. A journeyman PWB electrician reported the violation to
12 Griner, who contacted the "contract electrical expert" to assess the journeyman's report; Griner
13 quickly learned that numerous code violations had occurred and that the incident could have
14 easily resulted in an electrocution. Griner took the matter directly to Kovatch and Stuhr. The
15 angry response by Kovatch was "what have you done" by drawing attention to the violation, and
16 he ranted that Griner had "gotten [Stuhr] into a tizzy!"

61

Kovatch thereafter attempted to keep Griner at even more of a distance from potential safety concerns because of his past whistleblowing and otherwise thwart his efforts. In January 2017, for example, a water main broke in northeast Portland and flooded an entire street, damaging private property. At the time, Griner was assigned liability claims, which required him to assess liability and provide claims information to those with losses. He went to his direct supervisor and requested business cards for the City's Risk Management group; the supervisor replied that he had none. Griner attempted to go out to the scene, but was summoned back by Kovatch – Griner was told that he should not be involved because he was just going to "elevate

1 things." To further ostracize Griner from his co-workers, he made this comment in front of
2 numerous PWB supervisors and managers.

3 62.

4 After being repeatedly dissuaded from performing important safety-related concerns,
5 Griner went directly to Stuhr to try to fix the situation, through an emergency transfer if needed.
6 Stuhr promptly told Kovatch, and Griner's work environment deteriorated further. Kovatch kept
7 Griner from responsibilities that would hold him accountable.

8 63.

9 After Griner demonstrated his repeated willingness to try to ensure safety rules and
10 regulations were followed, Kovatch made Griner's work environment intolerable. He was
11 shunned and cut off from all relationships within his department. He is in constant fear for his
12 job. In 2017, Griner was undergoing so much stress that he had to take a medical leave of
13 absence because of Kovatch's abuse. The anxiety became so pronounced that it mimicked
14 symptoms of a heart attack, sending Griner to the emergency room. The PWB sent Kovatch to
15 sensitivity training because of his poor interpersonal skills, and Kovatch publicly mocked the
16 effort and the training.

17 **G. Grimsbo is Demoted Due to an Injury and Compelled to Perform the Same
18 Functions for Less Pay**

19 64.

20 Grimsbo began working at the PWB in October 1998 as a Utility Worker II was dutifully
21 employed until 2009, at which time he was laid off. He was rehired one year later into a Water
22 Operations Mechanic position. Grimsbo, however, as described in more detail below is one of
23 the many victim of Kovatch's disdain and frustration at employees who disturb routine and
24 metrics by getting injured.

1 65.

2 During his long tenure at the PWB, Grimsbo excelled at his job in all material respects
3 and earned the respect of his supervisors and co-workers.

4 66.

5 In or around 2014, however, Grimsbo suffered a severe on-the-job injury that required
6 extensive leave and rehabilitation. He had three major surgeries over an approximate 8-month
7 period.

8 67.

9
10 Grimsbo promptly filed a workers' compensation claim, which eventually settled the
11 claims relating to that injury. The claim, however, negatively impacted metrics by which
12 Kovatch was judged, which further irked Kovatch since it reflected poorly on him. Kovatch
13 never forgave Grimbso for suffering the injury.

14 68.

15 While Grimsbo was still recuperating from his injuries, he began experiencing pressure to
16 return to work. He visited the City's doctor – the doctor reported that he was specifically
17 instructed by the City to answer questions about Grimsbo to misrepresent his recovery – to lie
18 about the state of Grimsbo's injuries and answer questions so Grimsbo's claim would be denied.
19 All of this was *after* Grimsbo had undergone three surgeries – which the doctor had specifically
20 *approved* previously.

21 69.

22
23 Kovatch then demanded that Grimsbo return even while he was on serious pain
24 medication. Kovatch eventually succeeded in pressuring Grimsbo to return. One of Kovatch's
25 supervisor underlings informed Grimsbo that Kovatch was aware of Grimsbo's heavy medication
26 but he just didn't care.

1 70.

2 When Grimsbo returned to work, Kovatch demoted him from his position to a Utility
3 Worker I. His pay was drastically slashed and his responsibilities, at least at the outset, reduced.
4 The Utility Worker I position was an entry-level one that did not require the special certification
5 or skills of a Water Operations Mechanic.

6 71.

7 Kovatch, however, continued to utilize Grimsbo based on his superior skills – he
8 continued to task Grimsbo with his old responsibilities on an as-needed basis while not
9 compensating him appropriately.

10 72.

11 Kovatch continues to punish Grimsbo for his past perceived transgressions and Grimsbo
12 is still languishing as a Utility Worker I.

13

14 **H. Thompson Suffers an On-the-Job Injury and is Denied a Reasonable
15 Accommodation of His Disabilities**

16 73.

17 Thompson is a long-time employee of the City, having been continuously employed by
18 the City since June 16, 1994. Throughout his long career, he worked his way up from a position
19 as a street cleaning laborer to work in positions as a utility worker, automotive equipment
20 operator, an automotive equipment operator trainer, all the way to his current position as
21 Construction Equipment Operator. Thompson has worked as a trainer, served on the safety
22 committee, and received numerous safety awards and positive performance reviews.

23 74.

24 In 2001, Thompson suffered an on-the-job lower back injury while working with a
25 backhoe on the City's behalf. During the recovery from this injury, the City placed him on "light
26

1 duty," during which he was required to (1) sit in the middle of a concrete floor and organize
2 thousands of water meter slips and (2) work in a store room lifting and moving significant
3 weight. Both exacerbated his injury and caused him significant pain.

4

Over the years, Thompson learned that many of his fellow City employees had been similarly abused during the interactive process and provided decidedly *unreasonable* accommodations for their physical conditions. Others were subject to baseless employment charges and discipline and others were terminated for pretextual reasons, all to either squeeze out problem employees or punish them for interfering with the "normal" flow of work at the PWB.

76.

12 Thompson noticed how he too had been treated differently because of his ongoing
13 physical limitations. He was subject to illegitimate discipline, for example, and irrationally
14 denied his rights to correct inaccurate portions of his personnel file or provide him with his
15 medical records.

16 77

17 In 2017, Thompson seriously aggravated his back condition and became unable to return
18 to work in his normal capacity as an equipment operator. He began medical leave and submitted
19 a workers' compensation claim.

78

21 Despite eventually being released to work, Kovatch has refused to provide him with a
22 reasonable accommodation for his disability. Kovatch deemed Thompson unfit to work in any
23 capacity, let alone in a role suitable for his talents, devotion to his job, loyalty to the City, and
24 vast institutional experience. Kovatch has made this decision even though there are qualified
25 roles Thompson could fill even with his injury.

1 79.

2 Rather than provide him with a suitable position or accommodation, Kovatch has allowed
3 Thompson to linger too long on leave, first using all of his sick and vacation time and then
4 placed on indefinite unpaid hiatus.

5 80.

6 Thompson has repeatedly attempted to move Kovatch towards providing him with a
7 reasonable accommodation. During these interactions, Thompson disclosed that he has a mental
8 health condition that has the potential to impact interpersonal relationships. Upon learning this,
9 Kovatch stopped the interactive process and assumed (incorrectly) that Thompson was not
10 suitable for *any* position at the City. Thompson explained that the condition was fully treated
11 and under control, but Kovatch did not relent. Instead, Kovatch is currently encouraging and
12 pushing Thompson to retire – before his full benefits vest – rather than come back to work.
13

14 81.

15 This refusal to bring Thompson back in any office-related position at the City is an
16 interesting contrast to how Kovatch abuses other injured workers. Thompson had warned
17 management repeatedly that its practice of bringing back injured workers to operate heavy
18 equipment again created a safety and health reason given the particularized nature of the injuries
19 (e.g. spinal) common to heavy equipment operators. Many of these employees worked through
20 their pain, were injured again, and/or had their existing injuries exacerbated. Others were given
21 unsuitable positions with mundane or meaningless work in retaliation for reporting their injuries
22 and using leave.

24

25

26

21 – THE COMPLAINT

82.

Kovatch did not care about any of this. In March 2019, after refusing to consider Thompson for other positions, the City provided him with notice of its intent to terminate his employment.

IV. DAMAGES

83.

As a direct and proximate cause of Defendants' actions, Corbell has suffered and continues to suffer economic damages, including loss of earnings, benefits, job opportunities, and other employment benefits, in an amount continuing to accrue to be determined at trial. This amount, at the time of the filing of this complaint, is estimated to be approximately \$37,000 and continues to accrue at an estimated rate of \$6500 per month.

84

As a direct and proximate cause of the defendants' actions, Corbell has suffered emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness, humiliation, and loss of enjoyment of life. He therefore requests an award of non-economic damages in an amount to be determined at trial, currently estimated to be at least \$200,000.

85.

As a direct and proximate cause of Defendants' actions, Lewis has suffered and continues
to suffer economic damages, including loss of earnings, benefits, job opportunities, and other
employment benefits, in an amount continuing to accrue to be determined at trial. This amount,
at the time of the filing of this complaint, is estimated to be approximately \$3500 and continues
to accrue at an estimated rate of \$500 per month.

1 86.

2 As a direct and proximate cause of the defendants' actions, Lewis has suffered emotional
3 distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness, humiliation, and
4 loss of enjoyment of life. She therefore requests an award of non-economic damages in an
5 amount to be determined at trial, currently estimated to be at least \$75,000.

6 87.

7 As a direct and proximate cause of Defendants' actions, Griner has suffered economic
8 damages, including loss of earnings, benefits, and other employment benefits, in an amount
9 continuing to accrue to be determined at trial. This amount, at the time of the filing of this
10 complaint, is estimated to be approximately \$44,000.

11 88.

12 As a direct and proximate cause of the defendants' actions, Griner has suffered emotional
13 distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness, humiliation, and
14 loss of enjoyment of life. He therefore requests an award of non-economic damages in an
15 amount to be determined at trial, currently estimated to be at least \$200,000.

16 89.

17 As a direct and proximate cause of Defendants' actions, Grimsbo has suffered and
18 continues to suffer economic damages, including loss of earnings, benefits, job opportunities,
19 and other employment benefits, in an amount continuing to accrue to be determined at trial. This
20 amount, at the time of the filing of this complaint, is estimated to be approximately \$15,000 and
21 continues to accrue at an estimated rate of \$500 per month.

22 90.

23 As a direct and proximate cause of the defendants' actions, Grimsbo has suffered
24 emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness,
25 – THE COMPLAINT

1 humiliation, and loss of enjoyment of life. He therefore requests an award of non-economic
2 damages in an amount to be determined at trial, currently estimated to be at least \$200,000.

91.

4 As a direct and proximate cause of Defendants' actions, Thompson has suffered and
5 continues to suffer economic damages, including loss of earnings, benefits, job opportunities,
6 and other employment benefits, in an amount continuing to accrue to be determined at trial. This
7 amount, at the time of the filing of this complaint, is estimated to be approximately \$24,000 and
8 continues to accrue at an estimated rate of \$5,400 per month.

92

11 As a direct and proximate cause of the defendants' actions, Thompson has suffered
12 emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness,
13 humiliation, and loss of enjoyment of life. He therefore requests an award of non-economic
14 damages in an amount to be determined at trial, currently estimated to be at least \$200,000.

93.

Plaintiffs also seek reasonable attorney fees and costs in an amount to be proven at trial.

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24 – THE COMPLAINT

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1 **V. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **(By All Plaintiffs Against All Defendants)**

4 **(Retaliation Under ORS 659A.199 and ORS 659A.203)**

5 94.

6 Plaintiffs incorporate paragraphs 1 through 93 by reference as though set forth fully
7 herein.

8 95.

9 The City retaliated and/or discriminated against Plaintiffs because they have in good faith
10 reported information that they believed was evidence of a violation of a state or federal law, rule,
11 or regulation, or information that constituted mismanagement, gross waste of funds, abuse of
12 authority, or substantial and specific danger to public health and safety resulting from actions or
13 inactions of the City.

14 96.

15 The City retaliated against Plaintiffs by taking adverse employment actions against them,
16 including termination, harassment, refusing to provide promotions or suitable employment
17 positions, refusing to ensure the safety of the employees, and/or as otherwise alleged above.
18

19 97.

20 Kovatch and Drath aided, abetted, incited, compelled, or coerced the discrimination and
21 retaliation as alleged above.

22 98.

23 As a direct and proximate result, these plaintiffs suffered damages as described above.

24 99.

25 Plaintiffs seek an award of damages and fees as alleged in paragraphs 83 through 93,
26 including but not limited to attorney fees pursuant to ORS 659A.885.

25 – THE COMPLAINT

SECOND CLAIM FOR RELIEF

(By Lewis Against the City and Drath)

(Retaliation Under ORS 659A.183)

100.

Plaintiffs incorporate paragraphs 1 through 99 by reference as though set forth fully

6 herein.

101.

The City retaliated against Lewis because she used or attempted to use protected family

leave.

102.

The City retaliated against Lewis by taking adverse employment actions against her,

including harassment and the refusal to provide promotions, and as otherwise alleged above.

103.

Drath aided, abetted, incited, compelled, or coerced the discrimination and retaliation as alleged above.

104.

As a direct and proximate result, these plaintiffs suffered damages as described above.

105.

Plaintiffs seek an award of damages and fees as alleged in paragraphs 85, 86, and 93, including but not limited to attorney fees pursuant to ORS 659A.885.

- 1 -

25

26

THIRD CLAIM FOR RELIEF

(By Lewis Against the City and Drath)

(Discrimination and Retaliation Under ORS 659A.030)

106.

Plaintiffs incorporate paragraphs 1 through 105 by reference as though set forth fully.

6 herein.

107.

The City discriminated against Lewis because of her sex.

108.

The City retaliated against Lewis by taking adverse employment actions against her, including harassment and the refusal to provide promotions, and as otherwise alleged above.

109.

Drath aided, abetted, incited, compelled, or coerced the discrimination and retaliation as alleged above.

110.

As a direct and proximate result, these plaintiffs suffered damages as described above.

111.

Plaintiffs seek an award of damages and fees as alleged in paragraphs 85, 86, and 93, including but not limited to attorney fees pursuant to ORS 659A.885.

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26

FOURTH CLAIM FOR RELIEF

(By Lewis, Griner, Grimsbo, and Thompson Against All Defendants)

(Discrimination Under ORS 659A.112)

112.

Plaintiffs incorporate paragraphs 1 through 111 by reference as though set forth fully

herein.

113.

Lewis, Griner, Grimsbo, and Thompson each had at all material times a disability that

substantially limits one or more major life activities.

114.

The City discriminated against these individuals by failing to provide them with a

reasonable accommodation, and/or engage in an interactive process to determine if one was

available, and/or by taking adverse employment actions against them, including termination,

harassment, refusing to provide promotions or suitable employment positions, refusing to ensure

the safety of the employees, and/or as otherwise alleged above

115

Kovatch and Drath aided, abetted, incited, compelled, or coerced the discrimination and

retaliation as alleged above

116

As a direct and proximate result, these plaintiffs suffered damages as described above.

117

Plaintiffs seek an award of damages and fees as alleged in paragraphs 85 through 93.

including but not limited to attorney fees pursuant to QBS 659A-885

including but not limited to attorney fees pursuant to ORS 659A.885.

FIFTH CLAIM FOR RELIEF

(By Grimsbo and Thompson Against the City and Kovatch)

(Retaliation Under ORS 659A.040)

118.

Plaintiffs incorporate paragraphs 1 through 117 by reference as though set forth fully

herein.

119.

Grimsbo and Thompson each suffered work-related injuries and filed workers' compensation claims.

compensation claims.

120.

In retaliation for the injuries and filing workers' compensation claims, and warning about

the danger to other employees, these plaintiffs experienced adverse employment actions.

121.

The City discriminated against these individuals by taking adverse employment actions against them, including termination, harassment, refusing to provide promotions or suitable employment positions, refusing to ensure the safety of the employees, and/or as otherwise alleged above.

122.

Kovatch and Drath aided, abetted, incited, compelled, or coerced the discrimination and retaliation as alleged above.

123.

As a direct and proximate result, these plaintiffs suffered damages as described above.

124.

Plaintiffs seek an award of damages and fees as alleged in paragraphs 89 through 93, including but not limited to attorney fees pursuant to ORS 659A.885.

SIXTH CLAIM FOR RELIEF

(By Corbell, Griner, and Thompson Against the City and Kovatch)

(Retaliation Under ORS 654.062)

125.

Plaintiffs incorporate paragraphs 1 through 124 by reference as though set forth fully

6 herein.

126.

Corbell, Griner, and Thompson each raised safety concerns about the manner in which defendants conducted business. They each complained about and opposed the unsafe environment in which employees worked and were expected to work.

127.

As a direct and proximate result, these plaintiffs experienced retaliation by the City.

128.

The City discriminated against these individuals by taking adverse employment actions against them, including termination, harassment, refusing to provide promotions or suitable employment positions, refusing to ensure the safety of the employees, and/or as otherwise alleged above.

129.

Kovatch aided, abetted, incited, compelled, or coerced the discrimination and retaliation as alleged above.

130.

As a direct and proximate result, these plaintiffs suffered damages as described above.

131

Plaintiffs seek an award of damages and fees as alleged in paragraphs 83, 84, 87, 88, and 91 through 93, including but not limited to attorney fees pursuant to ORS 659A.885.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Economic damages against the defendants as alleged in paragraphs 83, 85, 87, 89,

and 91,

2. Non-economic damages against the defendants as alleged in paragraphs 84, 86, and 92,

3. Attorney fees and costs as allowed by law, as well as prejudgment and post-judgment interest, and

4. Any other relief the Court deems just and equitable.

Dated April 2, 2019.

FARGEY LAW PC

By: /s/ Micah D. Fargey

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